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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,124	05/06/2004	David Simpson	7824030/28580	7243
26386 7590 09/12/2007 DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C. THE FINANCIAL CENTER 666 WALNUT STREET SUITE 2500 DES MOINES, IA 50309-3993			EXAMINER FOX, CHARLES A	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 09/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/840,124

Applicant(s)

SIMPSON ET AL.

Examiner

Charles A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 18, 2007 has been entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble of claim 11 is drawn to a hoist mechanism with a stated intended purpose. Claim 11 has claim limitations dealing with containers which are distinct from the hoist mechanism. As such it is not clear if the claim is drawn to the subcombination of a hoist or to the combination of the hoist and the container. In the art rejections below the claims are treated as being drawn to the combination. Clarification is required.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The position of the actuator on the container is not adjustable on an individual container, but rather fixed. It is also unclear how one determines the

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proper placement of the actuator. In the rejection of the claims the placement is treated as relative to the front of the container and static regarding the rear of the containers.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster in view of Koeppe, Jr. et al. Regarding claim 11 Webster US 4,111,321 teaches a loading device for a truck comprising:

a telescoping hook lift arm (13) with a pivotal jib member (14);

said jib pivoting about a support member as well as being longitudinally movable relative to said support member;

wherein said support member is pivotal about a rear of the truck the device is mounted upon;

body locks (29) on the device to cooperate with lugs on a container to lock the container to the vehicle;

wherein said locks maintain the rear of the container at a predetermined position relative the rear of the vehicle, no matter what length container is used;

a hydraulic control system for controlling the movement of all portions of the device, said system including automatically controlled switches for restricting hydraulic fluid flow. Webster does not teach the lugs on the container as actuating a switch to

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restrict fluid flow to a cylinder. Koepp, Jr. et al. US 5,864,103 teaches using a limit switch to restrict fluid flow to a hydraulic cylinder based on the movement between a container (1) and a predetermined stopping point. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Webster with a limit switch as taught by Koepp Jr. et al. in order to automatically stop the container at a predetermined position by stopping extension of the hydraulic actuator when the container has reached said predetermined spot.

Regarding claim 2 Webster teaches placing a tab on each side of the container to mate with a lock on each side of the vehicle.

Regarding claims 12 and 13 Webster teaches placing the stops on the container such that the container extends a predetermined distance from the rear of the hoist, no matter what size container is used.

### ***Response to Amendment***

The amendments to the claims filed on June 18, 2007 have been entered into the record.

### ***Response to Arguments***

Applicant's arguments filed June 18, 2007 have been fully considered but they are not persuasive. Regarding the use of different containers this is taught by Webster where they teach using various containers. They further teach loading the containers such that a portion of the container overhangs the hoist to insure proper dumping. As such Webster teaches the general concept as claimed with the exception of the limit switch. As such the arguments are not deemed persuasive.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 573-272-6923. The examiner can normally be reached on Mon-Thurs 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 573-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Charles A. Fox 9-5-07*

Charles A. Fox  
Primary Examiner  
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